

The complaint

Ms W, as trustee of the Trust held by her late father, Mr D, complains that Financial Management Bureau ('FMB') Limited was partially responsible for allowing Mr D's reviewable whole of life policy to lapse without making reasonable efforts to contact Ms W or her daughter, who was his appointed attorney for financial matters at the time.

What happened

Ms W is represented by her daughter, Miss W, in bringing the complaint. Miss W also had a lasting power of attorney ('LPA') for Mr D in respect of his financial affairs and is the executor for his estate.

Mr D and his wife took out a Prudential Flexible Life Plan in 1996. This comprised with profits reviewable whole of life cover on a joint life, last death basis, with an annual premium payable each June. Mr and Mrs D were the lives assured under the policy, and it was written in trust with Ms W, Mr D and Mrs D as trustees and Ms W being the sole beneficiary.

The policy was taken out with a different independent financial adviser. However, the advice relationship later passed to FMB, and it says that since then it has received an annual renewal commission payment for the policy annually up to 2023.

Mr and Mrs D met with an adviser from FMB in 2010, 2011 and February 2012 for financial reviews, centred on inheritance tax obligations. FMB says the meetings were conducted on a one-off basis with Mr and Mrs D paying for its service on an hourly rate. FMB says Mr and Mrs D did not sign up to any ongoing service at that time and none has been provided since.

Mrs D passed away in 2016 whereby Mr D became the sole life assured under the policy.

In 2020, Mr D entered into residential care. So, Miss W contacted Prudential to provide it with Mr D's new address. Miss W says that unbeknownst to herself or Ms W, Prudential stopped correctly issuing annual premium notices after 2020, instead marking them as 'gone away' and redirecting them to its affiliate organisation in Ireland.

However, in June 2021, the policy was reviewed. Prudential wrote to Mr D at his existing address regarding the options for the next five years (which involved increasing the premium or reducing the sum assured).

FMB also wrote to Mr D in June 2021 noting that it had tried and failed to call him. It referenced the Prudential policy review and explained it would like to offer Mr D a financial review if he required one.

Miss W contacted Prudential regarding the review. She confirmed she had LPA for Mr D. She asked Prudential to amend Mr D's address, retire him as a trustee and to reduce the sum assured for the policy as one of the options upon review.

In July 2021, Prudential wrote to FMB confirming it had received an option choice from Mr D regarding the policy review and the next review would be undertaken in June 2026.

Prudential wrote to Miss W setting out more details about making changes relating to the LPA. It told Miss W it couldn't change the trust without retiring Mr D as a trustee – and that was dependent on his capacity to act. In August 2021, it also told Miss W that it required signed instructions from Mr D to change his address. Prudential says it did not hear back from Miss W. Miss W has explained that due to the upheaval of moving Mr D into care, she forgot to liaise with Prudential thereafter.

In May 2022, FMB called Prudential to discuss a premium arrears letter it had issued to Mr D. FMB's adviser explained to Prudential that it could not get hold of Mr D. Prudential told FMB that the address it had on file was the same one held by FMB. Prudential also told the adviser that Miss W had called it the previous year regarding the LPA, to which FMB's adviser said he would contact Miss W. However, Miss W says no such contact was made.

On 1 July 2022, the premium was successfully collected.

On 1 June 2023, Prudential again attempted to collect the policy's annual premium, but the payment failed due to insufficient funds being held in Mr D's account. It reattempted payment on 1 July 2023 and 1 August 2023, also unsuccessfully. Since the payment had failed, Prudential sent letters to Mr D dated 6 June 2023 and 6 July 2023 about the missing premium. However, it addressed those letters to the affiliate organisation, noting Mr D had 'gone away'. It also sent copies to FMB.

On 19 July 2023, FMB wrote to Mr D at his home address asking him to contact it by telephone to discuss the policy, as it had received a copy of the 6 July 2023 letter.

Miss W said that Mr D had noticed from bank statements that a direct debit had failed (though it was not clear to her what the payment was for), and she organised a payment on the account to ensure there was sufficient funds to cover it. However, this was one day after Prudential tried to collect the direct debit on 1 August 2023, so payment was not made.

On 4 August 2023, Prudential wrote to Mr D to inform him that the policy had lapsed. It also sent a copy of the lapse letter to FMB. It told Mr D the policy could be reinstated, subject to a declaration of health and payment of the unpaid premiums. FMB again forwarded this letter to Mr D at his original address.

In March 2024, Mr D also sadly passed away. After Miss W had begun to administer Mr D's estate, it became apparent that the policy had lapsed.

Complaints were made by Miss W both to Prudential and later, to FMB. The Prudential complaint has since been referred to the Financial Services and Pensions Ombudsman ('FSPO') in Ireland.

In the complaint to FMB, Miss W explained that it had known the policy letters were not reaching Mr D, as these had been addressed to Prudential at its affiliate's offices. However, it didn't inform Ms W or Miss W about that. And she did not believe FMB had written to Mr D at his previous address, because postal correspondence was being collected weekly from that address by a family friend.

Miss W also said that if FMB had undertaken a search of the records held by the Office of the Public Guardian ('OPG') then it could have easily ascertained Mr D had an LPA in place and contacted her as the attorney.

FMB issued a final response letter to Miss W dated 13 June 2024. It rejected the complaint

on the basis that it believed it had provided a reasonable level of service, though it noted no such duty existed between itself and Mr D. FMB said, in summary:

- It tried to write to Mr D (and telephone him on occasion) but it did not receive any reply.
- The correspondence it received was also sent to Mr D and Ms W.
- It was for the trustees to notify FMB of any changes to circumstances (such as change of address) as well as ensuring full payment of the policy premiums.
- It had not been able to ascertain Mr D's vulnerability as it couldn't contact him.
- Though it received commission, it had no obligation to carry out annual reviews for Mr D, nor was it responsible for the original sale of the policy.

Miss W brought Ms W's complaint on behalf of the trust and estate of Mr D to this service.

FMB explained that it had never been told of Mr D's change of address nor that an LPA was in place.

An investigator then considered the complaint, but he didn't think it ought to succeed.

Our investigator felt that FMB had shown that it had no ongoing advice relationship with Mr and Mrs D, though it did receive a separate commission payment for the policy. And he didn't think FMB was responsible for the contractual relationship between Mr D and Prudential or that it had contributed to the policy lapsing. This was since it hadn't any control over the payment of the premiums, or the actions of Prudential.

Though FMB had received a copy of Prudential's correspondence, it hadn't made any assurances that it would contact Mr D – though it did do so. Overall, the investigator said he was satisfied that FMB was not acting for Mr D at the time the policy lapsed.

Miss W said she disagreed with the investigator and wanted her complaint to be referred to an ombudsman. She said, in summary:

- She does not accept the view that FMB has no responsibility for the policy lapsing.
- She questions how it can be acceptable that FMB did not inform Prudential that it was no longer acting for Mr D.
- If FMB had told Prudential that it wasn't responsible, this would have placed greater pressure on Prudential to make contact with Mr D or his representatives.
- FMB believed Mr D's property had been sold in 2019, so for it to argue that it was then reasonable to write to that address in 2023 is inexcusable.
- FMB has never explained why it didn't contact Miss W directly.
- FMB has been allowed to escape any responsibility for doing the right thing for a vulnerable, elderly client.
- As far as Prudential was concerned, FMB had a client relationship with Mr D.
- That conclusion was reasonable on the part of Prudential as FMB had contacted Prudential in 2022.
- The only parties that knew the payments and when they were required were Prudential and FMB.
- FMB and Prudential were also the only parties who knew how to reinstate the cover, but instead it was allowed to lapse.
- Overall, FMB's actions amounted to a material contribution in the failure of the policy, and it should be liable for the inability to claim under the policy now.

Though he considered all of the additional comments made by Miss W, our investigator was not prepared to change his view on the complaint.

Miss W finally noted that she believed FMB knew what was happening with the policy and didn't do anything. Despite this, it remained on the record with Prudential as Mr D's adviser. If FMB had taken the action that it said it would in 2022 (and contacted Miss W) or told Prudential it wasn't Mr D's adviser, then she contends that Mr D's family would've been notified of the premium payment deadline - and the policy wouldn't have lapsed. Furthermore, had FMB contacted Miss W or Ms W when it was told that the policy had lapsed but could be restarted, then they would have been able to act to prevent it being lost altogether.

FMB didn't have any further comments to make. The complaint has now been passed to me.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank the parties for their patience whilst this matter has awaited an ombudsman's decision. Before I go any further, I send my best wishes to Miss W, Ms W and my sincere condolences for their loss. I can see Miss W has also told us of the severe impact that pursuing these complaints has had on her mental health, and I do not underestimate this.

I've set out the background to this complaint in less detail than the parties and I've done so using my own words. And, in reaching my conclusions, I've focused solely on what I consider are the key issues. Our rules allow me to take this approach; it simply reflects the informal nature of our service as a free alternative to the courts, and no discourtesy is intended by it. If there's something I haven't mentioned, it isn't because I've ignored it. It's since I don't need to comment on each individual argument to reach my decision.

This complaint has been pursued against FMB. Whilst the circumstances (and therefore much of the background) concern Prudential, I cannot make any determinations here in respect of Prudential's actions or inactions relating to the lapsed policy. That is the subject of the separate complaint to the Irish ombudsman scheme. I am limited in the context of this complaint to reaching findings about the concerns that Miss W pursued to FMB.

Having reviewed everything carefully, I agree with the outcome reached by our investigator – that means though I realise my decision will be disappointing for Miss W and Ms W, I won't be asking FMB to do anything further to resolve the complaint. I'll explain my reasons below.

The crux of Miss W's arguments about FMB's responsibility in this complaint arise from her assertion that FMB failed to uphold its fiduciary duty to Mr D regarding the Prudential policy; it is set out that such a duty is – or ought to be - paramount in Mr D's relationship with FMB.

I appreciate Miss W's stance, given it only became apparent to her that an advice business was attached to the late Mr D's policy after she was unable to pursue the claim with Prudential. Nonetheless, that FMB is recorded by Prudential as the advisory business in question, does not automatically determine that FMB has the responsibility to Mr D which Miss W has set out.

Whether such a fiduciary duty exists depends on the facts of the complaint, and in this case, I do not agree that FMB had the obligation that Miss W has contended. I say that being mindful of the evidence regarding the contractual arrangement between Mr D and FMB as well as the statutory and regulatory framework set out by the Financial Conduct Authority.

Mr and Mrs D did not take out the Prudential policy through FMB; it was sold by a different

business. After various sets of investment and financial planning advice from 2010 to 2012, the trail commission for the policy was transferred to FMB – but this did not establish an ongoing advice relationship. The Client Remuneration Agreement Mr and Mrs D signed on 23 January 2012 confirmed that *“Mr and Mrs [D] would prefer to continue paying by the hour. Agreed to offset commission from the policies in the first instance to avoid VAT where possible”*. For that reason, the section of the form entitled *“ongoing advice fee”* was not completed, and no such future or continued relationship was agreed to in 2012 or earlier.

This distinction is important – as though FMB received trail commission for the Prudential policy (following a transfer from the original advisory business), this did not require it to maintain any ongoing advice relationship with Mr and Mrs D. FMB was able to act in this way, because the trail commission was set up before the Retail Distribution Review (*‘RDR’*) came into force on 1 January 2013. The impact of the RDR was that whilst advisers could no longer receive fees for investment and pension advice through ongoing commission payments, trail commission for any policies instituted before 31 December 2012 was able to continue providing the policy terms allowed for it.

Consequently to the requirements of the RDR, the FCA did not require advisers/advice businesses to provide an explicit ongoing service in exchange for grandfathered trail commission, except in circumstances where the advice business had expressly agreed to do so in writing. And that had not happened here; instead, Mr and Mrs D agreed to pay transactionally for any advice regarding their financial planning objectives. However, no further advice took place after the RDR came into force.

FMB’s obligation to Mr and Mrs D was to disclose the commission payments and to expressly confirm what, if any, service was being provided. However, no such service was being provided and the arrangement put in place in 2012 was confirmed as the receipt of trail commission. In respect of any other future advice, this was recorded as *“Mr and Mrs [D] would continue paying by the hour”*.

I have seen no objective reason to disregard the documentary evidence that no ongoing advice relationship was in place between FMB and Mr and Mrs D, especially since no further advice took place for the next decade thereafter. And when the Prudential policy underwent its five-year premium review in 2021, FMB wrote to Mr D (at his existing address which it had on file at that time) to ask if he would like to receive a financial review. I am satisfied that the invitation clarifies that no obligation on FMB’s part existed. And I have seen no evidence that the letter was not properly received, noting that the vast majority of post is correctly delivered and Miss W says postal correspondence was collected weekly from Mr D’s home.

That FMB went on to call Prudential in 2022 after a failed premium collection and write to Mr D again in 2023 was a matter of its choosing. However, I cannot see that it had any regulatory or wider contractual obligation to do so. No such terms existed between Mr D and FMB in the form of a client agreement or otherwise.

I accept that due to external pressures, Miss W wasn’t able to follow up with Prudential in 2021 in terms of retiring Mr D as a trustee or to formalise her position as LPA. However, I cannot reasonably hold FMB accountable for that, as this was not something it had any involvement with.

When FMB spoke with Prudential in 2022, its staff member did pass Miss W’s details to a financial adviser, but that person didn’t make further contact with her. However, for the reasons I have set out above, FMB wasn’t under any obligation to do so merely because the trail commission continued to be paid for the policy. No ongoing advice relationship was in place with Mr D, and it did not have his authority to speak with Miss W in any event.

When the premium payment failed again the following year, FMB wrote to the address it held for Mr D, which - despite uncertainty over whether this was a property still owned by Mr D – was the last known address it had on its records, as no update had ever been supplied. That Prudential chose to send the letter to an unrelated business address was not a matter within FMB's control. I cannot agree with Miss W that FMB ought to have researched the ownership status of Mr D's home with the Land Registry or sought to contact either the co-trustee of the policy or the OPG. The correspondence copied from Prudential to FMB was addressed to Mr D, because he was the sole life assured for the policy.

It is of course incredibly upsetting for Miss W and Ms W that the policy lapsed due to unpaid premiums, and though money was then placed into the relevant account by Miss W, this was the next working day after the third premium collection had been attempted. But this isn't something I can hold FMB accountable for either. It had no impact on the contractual insurance arrangement between Mr D and Prudential; it wasn't responsible for ensuring the premiums were paid in return for the continuation of the policy under agreed terms – that duty fell to Mr D, or Miss W in the event Mr D lacked capacity, in her role as attorney.

That FMB sent correspondence on to Mr D at the address it held for him was something it says it did as goodwill, in order to treat Mr D fairly because it was copied into important correspondence about the policy. And when it wrote to him at the address in 2021 and 2023, its letters weren't returned as undelivered. However, FMB did not have any duty or obligation to act upon the content of the correspondence or to undertake its own investigations as to the underlying cause of the failed premium collection. Neither Mr D nor Miss W were clients of FMB's at the time of the copied correspondence. It follows that I cannot agree with Miss W's contention that FMB made a material contribution to the failure of the policy.

My final decision

Despite my considerable sympathy for Ms W and Miss W, I am not able to uphold the complaint on behalf of the Trust and estate of the late Mr D.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W as trustee of the Trust to accept or reject my decision before 1 October 2025.

Jo Storey
Ombudsman